

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

**NOTE:** There is one Extraordinary issue to the Official Gazette, Series II No. 40 dated 4-1-96 namely, Extraordinary dated 4-1-96 from pages 401 to 404 regarding Notifications from Department of Revenue.

### GOVERNMENT OF GOA Department of Cooperation

Office of the Asstt. Registrar of Cooperative Societies

Order

No 41-33-83/AR(Dairy)NZ

- Read:- 1) Order No. 41-33-83/AR(Dairy)NZ dated 3-7-1992, appointing Shri R. B. N. Satardekar, Jr. Inspector, Coop. Societies (Dairy), Ponda, as a liquidator of Kamdhenu Sah. Dudh Vya. Sauntha Maryadit Keri, Pernem.
- 2) Letter dated 16-12-1994 from Shri R. B. N. Satardekar liquidator of aforesaid society submitting thereunder the final report in respect of the society in terms of Section, 109(2) of the Maharashtra Coop. Societies Act, 1960, as applied to the State of Goa.

By virtue of the power vested in me under the provision of Sub-Section (2) of Section 109, of Maharashtra Coop. Societies Act, 1960, as applied to the State of Goa I, M. T. Verlekar, Asstt. Registrar, Coop. Societies (Dairy), Ponda hereby terminate the liquidation proceeding of The Kamdhenu Sah. Dudh Vyavasahik Sauntha Maryadit Keri, Pernem with effect from the date of issue of this order.

Further, in terms of provision of Section, 21, of the aforesaid Act, the registration bearing No. PRD(C)27/AR(Dairy)/Goa dated 1-3-1995 of the Kamdhenu Sah. Dudh Vya. Sauntha Maryadit Keri, Pernem is hereby cancelled.

Sd/- M. T. Verlekar, Asstt. Registrar of Coop. Societies, (Dairy).

Ponda, 30th March, 1995.

Order

No. 16-12-83/AR(Dairy)/LQD

- Read:- 1. Order No. PRD-(c)-42/Goa/LQD/71 dated 27-12-71 appointing Shri R. T. Khorjuvekar as liquidator of St. Andre Sah. Dudh Vya. Sauntha Ltd., St. Andre.
2. Letter No. LQD/KSG/STDCS/Society/94 dated 12th Dec., 1994 from Shri K. S. Gaude Liquidator of aforesaid society submitting thereunder the final report in respect of the society in terms of Sec 109(2) of the Maharashtra Coop. Societies Act 1960, as applied to the State of Goa.

By virtue of the power vested in me under the provision of Section 109(2) of Maharashtra Coop. Societies Act 1960 as applied to the State of Goa I, M. T. Verlekar Asstt. Registrar, Coop. Societies (Dairy), Ponda hereby terminate the liquidation proceedings of St. Andre Sah. Dudh Vya. Sauntha Maryadit, St. Andre with effect from the date of issue of this order.

Further in terms of provision of Sec. 21 of the aforesaid Act, the registration bearing No. PRD(C)-42-Goa dated 7-11-1965 of St. Andre Dudh. Vya. Sauntha Maryadit, St. Andre is hereby cancelled.

Sd/- M. T. Verlekar, Asstt. Registrar of Coop. Societies, (Dairy).

Ponda, 28th March, 1995.

Office of the Asstt. Registrar of Coop. Societies  
and Ex-Officio Joint Secretary

Order

No. 1-3-71/EST/B

Read: Letter No. Conf/II/II/77(I)95 dated 5-10-1995 from the Secretary, Goa Public Service Commission, Panaji-Goa.

On the recommendation of the Goa Public Service Commission, vide letter referred the above, Shri R. V. Naik, Sr. Marketing Inspector, in the Office of the Registrar of Coop. Societies, Panaji, is hereby promoted on regular basis to the post of Asstt. Marketing Officer (Group 'B' Gazetted), in the scale of Rs. 1640-2900 with immediate effect and posted in the Office of the Registrar of Coop. Societies, Panaji.

Shri R. V. Naik, will be on probation for a period of two years from the date of his regular promotion.

S. S. Byali, Registrar of Coop. Societies & Ex-Officio Jt. Secretary (Coop.).

Panaji, 12th October, 1995.

Office of the Asstt. Registrar of Coop. Societies

Notification

No. ARCS/CZ/Urban Credit/109/ADM/95

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the State of Goa, the Azmane Urban Cooperative Credit Society Ltd., Mandur-Neura, Tiswadi-Goa is registered under Code Symbol No. ARCS/CZ/Credit-8(a)/98/Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 8th November, 1995.

## Certificate of Registration

The Azmane Urban Cooperative Credit Society Ltd., Mandur-Neura, Tiswadi-Goa is registered on 8-11-1995 and it bears registration No. ARCS/CZ/Credit-8(a)/98/Goa and it is Classified as "Resource Society" in terms of Rule 9 of the Cooperative Societies Rules, 1962 for the State of Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 8th November, 1995.

## Notification

No. ARCS/CZ/HSG/318/ADM/95

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the State of Goa, the Subha Sidhi Cooperative Housing Society Ltd., Tisk-Ponda-Goa is registered under Code Symbol No. ARCS/CZ/HSG/301-(b)/Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 15th November, 1995.

## Certificate of Registration

The Subha Sidhi Cooperative Housing Society Ltd., Tisk, Ponda-Goa is registered on 15-11-1995 and it bears registration No. ARCS/CZ/HSG/301-(b)/Goa and it is Classified as "Housing Society" under Sub-Classification No. 5(b) - "Tenant Co-partnership Housing Society" in terms of Rule 9 of the Cooperative Societies Rules, 1962 for the State of Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 15th November, 1995.

## Notification

No. ARCS/CZ/HSG/321/ADM/95

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the State of Goa, the Altop Cooperative Housing Society Ltd., Campal, Panaji-Goa is registered under Code Symbol No. ARCS/CZ/HSG/302-(a)/Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 4th December, 1995.

## Certificate of Registration

The Altop Cooperative Housing Society Ltd, Campal, Panaji-Goa is registered on 4/12/1995 and it bears registration No. ARCS/CZ/HSG/302-(a)/Goa and it is Classified as "Housing Society" under Sub-Classification No. 5(a) - "Tenant Ownership Housing Society" in terms of Rule 9 of the Cooperative Societies Rules, 1962 for the State of Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 4th December, 1995.

## Notification

No. ARCS/CZ/CONS-33/ADM/95

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the State of Goa, the Divar Consumers Cooperative Society Ltd., Morod, Piedade, Ilhas-Goa is registered under code Symbol No. ARCS/CZ/Cons-30/Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 12th December, 1995.

## Certificate of Registration

The Divar Consumers Cooperative Society Ltd., Morod, Piedade, Ilhas-Goa has been registered on 12/12/1995 and it bears registration code symbol No. ARCS/CZ/Cons-30/Goa and it is classified as "Consumers Society" under classification No. 2 in terms of Rule 9(1) of the Cooperative Societies Rules, 1962 for the State of Goa.

Sd/- D. M. Pathan, Asstt. Registrar of Coop. Societies, Central Zone.

Panaji, 12th December, 1995.

## Department of Labour

## Order

No. 23-23/91-LAB

In pursuance of Clause 4 read with Clause 3 of the Goa, Daman and Diu State Apprenticeship Council Order read with the Government Notification No. 1/3322/75-LAB (AP) dated 22/4/1978 the Government of Goa is pleased to reconstitute the Goa, Daman and Diu State Apprenticeship Council constituted vide Government Order No. 25/7/79-ILD dated 27-8-83 to establish the Goa State Apprenticeship Council as detailed below:—

1. Minister for Labour & Industries — Chairman
2. Rear Admn. B. R. Memon, Chairman. — Member
3. State State Apprenticeship Advisor — Member
- A. Representatives of employers in establishments in the Public Sector.
  1. Mr. Bhatikar, Chairman, M.P.T., Vasco. — Member
  2. Rear Admn. B. R. Menon, Chairman, — Member.  
Goa Shipyard Ltd., Vasco.
  3. Mr. R. R. Borkar, Managing Director, E.D.C. — Member
  4. Mr. Ian D'Costa, Managing Director, K.T.C. — Member
  5. Professor V. A. Keni, Institute of hotel — Member  
Management & Catering Technology.
- B. Representatives of employers in establishment in the Private Sector.
  1. Mr. Chatterjee, Executive President, — Member  
Zuari Agro Chemicals Ltd.
  2. Mr. Leonard D'Costa, Taj Group of Hotel's — Member  
Director Corporate Human Resources.
  3. Mr. B. M. Mathai, M.R.F. — Member
  4. Mr. Joshi, President of Goa Small Scale — Member  
Association.
  5. President Goa Pharmaceutical — Member  
Association.
- C. Representatives of Central Government.
  1. The Director of Training Board of — Member  
Apprenticeship Training.
  2. The Regional Director of — Member  
Apprenticeship Training.
  3. Dr. Ehrlich Bailon Antonio de Sa — Member  
Director, N.I.O.
  4. Mr. S. V. Saleikar, Konkan Railway — Member  
Advisor.
  5. Rear Admn. B. R. Menon, Chairman & — Member  
Managing Director Goa Shipyard, Vasco.
- D. Representatives of the State Government.
  1. Chief Engineer, P. W. D. — Member
  2. Chief Engineer, Electricity. — Member
  3. Captain of Ports. — Member
  4. Chairman, Manpower Development Cell. — Member
  5. Director of Employment. — Member
- E. Persons having special knowledge and experience in the matter relating to Industries, Labour and Technical Education.
  1. Mrs. Victoria Fernandes, M.L.A., St. Cruz. — Member
  2. Mr. Anthony Rebello, Rozvaddo, — Member  
Varca-Goa.
  3. Mr. Francis Rodrigues, Principal of — Member  
St. Mary's High School Varca.
  4. Mrs. Nirmala Sawant, President, — Member  
G.P.C.C. (I), Panaji.
  5. Mrs. Louis Saldanha. — Member

**F. Representative of the Board of Technical Education or the State Council of Technical Education.**

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|--|----------|
| 1. Chairman/Secretary Goa State Council and Technical Education. | — Member |
| 2. Director of Fire Services.                                    | — Member |
| 3. Principal, Goa Engineering College.                           | — Member |
| 4. Principal, Government Polytechnic Panaji.                     | — Member |
| 5. Principal, Institute Ship Building Technology.                | — Member |

By order and in the name of the Governor of Goa.

**F. O. D'Costa**, Under Secretary (Labour).

Panaji, 11th October, 1995.

**Order**

No. 28/MISC/AWARDS/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

**F. O. D'Costa**, Under Secretary (Labour).

Panaji, 13th October, 1995.

**IN THE INDUSTRIAL TRIBUNAL, GOVERNMENT OF GOA  
AT PANAJI**

**(BEFORE SHRI AJIT J. AGNI, HON'BLE PRESIDING  
OFFICER)**

No. IT/14/92

Shri Subhas Patil,  
Rep. by Goa Trade & Commercial  
Workers Union,  
Panaji-Goa.

— Workmen/Party I.

V/s

The Executive Engineer,  
Works Div. IX,  
Irrigation Department,  
Margao-Goa.

— Employer/Party II.

Party I represented by Shri Subhas Naik.

Party II represented by Adv. K. Y. Thaly.

Panaji Dated: 16-8-1995.

**A W A R D**

In exercise of the powers conferred by clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa by order dated 30-1-1992 bearing No. 28/18/87-ILD referred the following dispute for adjudication by this Tribunal.

(1) Whether the Works Division IX of the Irrigation Department, Government of Goa, Margao, is an Industry in terms of section 2(d) of the said Act?

(2) If so, whether the action of the Executive Engineer, Works Division IX, Irrigation Department, Government of Goa, Margao, in terminating the services of Shri Subhas Patil and Pradip Hubliker w.e.f., 16-10-86 is legal and justified?

(3) If the answer to (2) above is negative, then to what relief the workmen is entitled?

2. On receipt of the reference a case was registered under No. IT/14/92 and registered A. D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. Party I (for short, 'workmen') were represented by Shri Subhas Naik and the Party II (for short, 'employer') was represented by Adv. K. Y. Thaly. The workmen filed their statement of claim which is at Exb. 3. The facts of the case in brief are that the Irrigation Department has its Head Office at Panaji, Goa and several other offices in other parts of Goa, amongst them being an office

at Margao, Salcete, Goa. That the Irrigation Department provides water to whole of Goa for domestic use as well as for agriculture and business. That the Irrigation Department has few dams in Goa and one of such dam is the Salaulim dam. That it also digs bore wells in villages for supply of water for domestic as well as agricultural use. It charges money. That besides supplying water to the consumers, the said department also does survey of rivers in Goa amongst them being the Khandepar river at Collem.

The contention of the workmen is that since the employer carries out the business of supplying water by charging money it is an industry as defined under the Industrial Disputes Act, 1947. That the workmen were engaged as Gauge Readers at Khandepar river at Maida, Collem, Goa, by the employer and the work assigned to them was to measure the level of Khandepar river daily after every hour. That the workman Shri Subhas Patil was employed in the month of September, 1984 and the workman Shri Pradip Hubliker was employed in the month of March, 1985 and initially both were paid daily wages of Rs. 22/- and the same wages were increased to Rs. 25/- per day in the year 1986. That the attendance of both the workmen was marked by Jr. Engineer and their duties were to see the level of water at river Khandepar at regular intervals and maintain records of the same. That from the date of their appointment both the workmen worked continuously and prior to the termination of their services on 16-10-86, both the workmen had put in over 240 days of service in one year. That on 15-10-86 when the workmen reported for work as usual the Jr. Engineer informed to them that their services stood terminated w.e.f., 16-10-86 as there was no work for them. That prior to the termination of their services no notice was given to them by their employer nor they were paid one month's wages in lieu of notice nor retrenchment compensation was paid to them thereby violating the provisions of Sec. 25F of the Industrial Disputes Act, 1947. That after the termination of the services of the workmen on 16-10-86 the employer employed some other persons as Gauge Readers in their place. The contention of the workmen therefore is that the termination of their services by the employer is illegal and unjustified and consequently they are liable to be reinstated with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 4. The facts of the case in brief as pleaded by the employer are that the reference was not maintainable because the workmen were not 'Workman' within the meaning as defined under the Industrial Disputes Act, 1947 as also on the ground that the employer was not an industry as defined under the Act, it being a Government Department performing sovereign functions. That both the workmen were employed on daily wages and no letter of appointment was issued to them. The employer contended that both the workmen were employed on daily wages for that particular season purely on temporary basis and hence there was no question of giving any termination notice or month's wages in lieu of notice. That the workmen could not claim any right for the said vacancies as they were taken on daily wages. The employer therefore contended that the workmen were not entitled to any relief. The workmen thereafter filed rejoinder which is at Exb. 5 controverting the pleadings made by the employer in the written statement. The workmen denied that the work of gauging had been stopped and further stated that even in the case of temporary workmen the employer is required to comply with the mandatory provisions of Sec. 25 of the I.D. Act, 1947 which are mandatory.

4. On the pleadings of the parties, following issues were framed at Exb. 6:

1. Does Party No. I prove that the Irrigation Department of Goa is an Industry within the meaning of Industrial Disputes Act?
2. Does Party II prove that Party I is not workman under I. D. Act, 1947?
3. Does Party I prove that the order of termination of their services is not legal and justified?
4. If yes, whether Party I is entitled to any relief?
5. What award or order?

5. My answers to the issues are as follows:

1. In the affirmative
2. In the negative
3. In the affirmative
4. As per para. — below
5. As per order below.

## REASONS

6. Issue No. 1.: The contention of the workmen is that they were employed by the Irrigation Department as Gauge Readers to measure the level of Khandepar river at Maida, Collem, Goa, daily after every hour. The workmen have contended that the Irrigation Dept., of the Government of Goa, is an industry within the meaning of Sec. 2(j) of the Industrial Disputes Act, 1947. Shri Subhas Naik representing the workmen submitted that the Irrigation Dept., is engaged in trade and commercial activities. He submitted that the Irrigation Department has constructed few dams including one at Salaulim and it supplies water for domestic as well as for agricultural purpose for which it charges and also it carries on survey of rivers and one of such river is Khandepar river at Collem. Shri Subhas Naik contended that the Irrigation Dept., of the Government comes well within the definition of Industry as defined in I.D. Act, 1947. He relied upon the decision of the Supreme Court in the case of the Bangalore Water Supply & Sewerage Board v/s Rajappa reported in AIR 1978, S. C. 548; the decision of Punjab and Haryana High Court in the case of State of Punjab v/s Kuldip Singh reported in 1984 FJR Vol. 65, page 75 and the decision of the Gujarat High Court in the case of P.W.D. Employees Union and others v/s State of Gujarat and others reported in 1988 I LLJ 524. Adv. Thaly representing the employer on the other hand submitted that irrigation is a sovereign function of the Government and hence not an Industry as defined under the I.D. Act, 1947.

I have carefully considered the arguments advanced by both the learned Advocates. The employer have not disputed that the Irrigation Dept., is engaged in the activity of construction of dams and supply of Water for domestic as well as for agricultural use. Shri Kotiganahally the witness for the employer has admitted in his cross examination that the Irrigation Department charges money to the farmers for the supply of water to their fields and also issue receipts to that effect. The receipt dated 9-11-84 Exb. W-1 produced by the workman is admitted by the said witness and also that the said receipt is towards the charges paid for the consumption of water supplied by the Irrigation Department. The said witness has also stated in his deposition that the Irrigation Department is concerned with survey and investigation of river sources and to formulate projects for the benefit of public. The Gujarat High Court in the case of P.W.D. Employees Union (supra) relied on the decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra) and various other decisions of the Supreme Court and other High Courts and in para. 16 of its judgement held that construction of dams and allied activities in connection therewith is the welfare activity or economic adventure undertaken by the Government as contradistinguished from sovereign functions *stricto sensu*. The Gujarat High Court in para. 19 of its judgment further held that the petitioners who are working in P.W.D. (Irrigation) of the State Government were entitled to the benefits of the Industrial Disputes Act, since the activities undertaken by the Irrigation Department are Industry within the definition of the term "Industry" in Sec. 2(j) of the Industrial Disputes Act and they cannot be said to be discharging sovereign functions *stricto sensu*. However, the question whether the Irrigation Dept., of the Government is an Industry has been finally decided by the Supreme Court in the case of Des Raj v/s State of Punjab & Others reported in AIR 1988 S.C. 1182. While overruling the decision of the Punjab & Haryana High Court in the case of Om Prakash v/s Management, M/s Executive Engineer reported in 1984 Lab. I.C. 1165 wherein the Punjab & Haryana High Court held that the Irrigation Department is not an Industry, the Supreme Court in Des Raj's case (supra) in para. 13 of its judgement has held as follows:

The Administrative report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgement. On the tests as already laid down in the judgement, we do not think these facts found in this case would take out the Irrigation Department outside the preview of the definition of "Industry". We have already referred to the Dominant Nature Test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to Dominant Nature Test clearly come within the ambit of Industry".

Therefore applying the law laid down by the Supreme Court in the case of Des Raj (supra) and the Gujarat High Court in the case of P.W.D. Employees Union (supra), I am of the opinion that the workmen have succeeded in proving that the Irrigation Department of the Government of Goa is an Industry within the meaning of the Industrial Disputes

Act. In the circumstances, I hold that the Irrigation Department of Goa is an Industry within the meaning of Sec. 2(j) of the Industrial Disputes Act, 1947 and hence I answer the issue in the affirmative.

7. Issue No. 2.: The contention of the employer is that the workmen are not "Workmen" as defined u/s 2(5) of the Industrial Disputes Act, 1947. Adv. Thaly representing the employer submitted that the workmen were employed as casual workers on daily wages and since there was no obligation to provide work for them. They were not "Workmen" within the definition. He relied upon the decision of the Madras High Court in the case of E. Elumalai v/s the management of Simplex Concrete Piles (India) Ltd., Madras & another, reported in 1970 Lab. I. C. 1469 in this respect. He further submitted that no letter of appointment was issued to them nor they signed the muster roll. Shri Subhas Naik representing the workmen on the other hand submitted that even though the workmen were employed on daily wages they were paid their wages at the end of the month. He further submitted that daily wages Workers also fall within the definition of "Workmen" as defined under the I.D. Act, 1947.

The case of the workmen is that they were employed by the Irrigation Department to do the work of gauge reading of Khandepar river and that they were employed on daily wages. This fact is admitted by the employer's witness Shri Khotiganahally Iyer in his deposition. The said witness further stated that the wages were paid to the workmen at the end of each month, which is also the case of the workmen. Section 2(s) of the Industrial Disputes Act, 1947 defines "Workman" as follows:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, where the terms of employment be expressed or implied and for the purpose of any proceedings under this Act in relation of an industrial dispute includes such person who has been dismissed, discharged, or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment had led to that dispute but does not include any such person:

(I) Who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); OR

(II) Who is employed in Police service or as an Officer or other employee or a prison; OR

(III) Who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding Rs. 1600/- per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The Employer has relied upon the decision of the Madras High Court in the case of E. Elumalai (supra) in support of its contention that casual workers on daily wages are not "Workmen" as defined under the Industrial Disputes Act, 1947. In fact the decision of the Madras High Court does not support the case of the employer but it supports the case of the workmen. The Madras High Court in the said case has held that Section 2(s) of the I.D. Act, 1947 defines "workman" in widest possible terms including apprentice and that Section 25-c when it uses the expression "workman" (other than a Badli workman or a casual workman) clearly show that a casual workman is included in the definition of workman in Section 2(s) of the Act. Therefore, the authority of the Madras High Court relied upon by the employer goes against it. The Division Bench of the Calcutta High Court in the case of Tapan Kumar Jana v/s Calcutta Telephones & others reported in 1988 II LLJ 382 has held that a casual labourer employed in an industry for hire or reward will be a "workman". In the case before the Calcutta High Court the appellant Tapan Kumar Jana was appointed as a casual employee of the Calcutta Telephones. He was paid his wages on the 5th day of every month for the work rendered by him in the preceding month and the amount was calculated at a daily rate. The point was whether a casual labourer is a "workman" within the meaning of Section 2(s) of the Act. The Calcutta High Court relying upon the decision of the Supreme Court in the case of Digwadih Colliery v/s Their workmen, reported in 1965 II LLJ 118 wherein it was held that the termination of the services of a badli workman amounted to retrenchment within the

meaning of Sec. 2(oo) of the Act and that of the Madras High Court in the case of P. Joseph v/s management of Gopal Textiles Mills reported in 1975 1 LLJ 136, wherein it was observed that the definition of "workman" does not exclude even the casual employee or a substitute like "badli", in para. 15 of its judgment held as follows:

"The definition has not provided for the exclusion of a casual labourer from the category of workman nor has it laid down that only the permanent employees of an industry will be workmen. Certain employees have been excluded from the definition of "workman" but such exceptions also do not include a casual labourer. The primary condition that has to be fulfilled by an employee to bring him within the definition of "workman" is that he must be employed in an industry for hire or reward. The concept of permanent employment is not the only criteria of the definition of the term "workman". Any person or employee who satisfies the primary conditions as stated above and who does not come within the exception contained in the definition will be a workman. If a casual labourer is employed in an industry for hire or reward, he will be a "workman", within the meaning of Sec. 2(s) of the Act. There is nothing in the definition of terms "Workman" which excludes a casual labourer."

I agree with the above decisions of the Madras High Court and the Calcutta High Court. As I have said earlier in the present case, it is the case of the employer Irrigation Department itself that the workmen were employed as casual workers on daily wages and that they were paid their at the end of the month. This is in the evidence of the employer's witness Mr. Kotiganahally Iyer himself. Further while discussing the issue No. 1 whether the Irrigation Department of the Government is an 'Industry' or not, I have held that it is an Industry as defined under the Act. Therefore the workman satisfy the primary test as laid down by the Calcutta High Court and also they do not come within the exceptions contained in the definitions of 'workman'. This being the case the workmen who were employed by the employer Irrigation Dept., as casual workers on daily wages are "workman" within the definition of the Act. I, therefore hold that the employer has failed to prove that the workmen Shri Subhas Patil and Shri Pradip Hublikar are not workman under the I.D. Act, 1947 and hence I answer the issue No. 2 in the negative.

8. Issue No. 3: The contention of the workmen is that they have worked for more than 240 days prior to the termination of their services. Shri Subhas Naik representing the workmen contended that the termination of the services of the workman amounted to retrenchment and since no retrenchment compensation was paid to the workmen at the time of termination, their termination of services is illegal and not justified. In this respect he relied upon the decision of the Calcutta High Court in the case of Tapan Kumar Jana v/s Calcutta Telephones and other reported in 1988 11 ELJ. Adv. Thaly representing the employer on the other hand argued that there is no continuity in service in respect of both the workmen and there are breaks and hence there is no question of payment of retrenchment compensation to the workmen. He further submitted that there are no posts of gauge readers in the Irrigation Department and even if it is held that the termination of the services of the workmen is illegal and not justified, no reinstatement can be granted.

I have carefully considered the arguments advanced by both the parties. I have already held that the Irrigation Department of the Government of Goa is an Industry within the meaning of Industrial Disputes Act, 1947. I have also further held that the workmen are "workman" within the meaning of the I.D. Act, 1947. With this background it is to be seen whether the termination of the services of the workmen is illegal and unjustified. It is an admitted fact that the services of the workmen were terminated w.e.f. 16-10-86. In paras 3 and 4 of the written statement, the employer took a stand that the services of the workmen were terminated because they were employed for the particular season on temporary basis and hence there is no question of giving any notice or paying month's wages in lieu of the notice to the workmen. However, in the course of the evidence, a total different and contradictory stand was taken by the employer for terminating the services of the workmen. Shri Kotiganahally Iyer, the witness of the employer in his cross examination stated that the services of the workmen were discontinued because of their arrogance in behaviour. The employer has produced the copies of the muster roll along with the summary at Exb. E-1 (colly) and Exb. E-2 (colly) in respect of the workmen. The said documents dis-

prove the contention of the employer that the workmen were employed for the particular season. The said documents namely Exb. E-1 (colly) and E-2 (colly) show that the workmen had worked even during the non-rainy season i. e. they had worked even in the month of October to May. Though the employer's witness stated in his cross examination that the services of the workmen were terminated because of their arrogant behaviour he admitted that neither Memo nor charge sheet was issued to them nor any enquiry was held against them. Infact, the above statements of the witness is contrary to the pleadings made by the employer in the written statement. In para. 3 & 4 of the written statement the employer took the stand that the workmen were employed for a particular season for doing the gauging work and since the gauging work for the season was completed, there services stood terminated. The employer further took the stand that since the workmen were casual workers purely on temporary basis, the question of giving notice or month's wages in lieu of notice did not arise. Therefore, it was never the case of the employer that the services of the workmen were terminated because of any misconduct. According to Shri Subhas Naik, representative of the workmen, the termination of the services of the workmen amounts to retrenchment. Section 2(oo) of the I.D. Act, 1947 defines retrenchment as follows:

"Retrenchment" means the termination by the employer of the services of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include:

(a) Voluntary retirement or;

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and employee concerned contains a stipulation in that behalf or;

(bb) Termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf concerned therein or;

(c) Termination of the services of a workman on the ground of continued illhealth.

The termination of the services of the workmen in the present case was not as a punishment inflicted by way of disciplinary action nor their case falls within the exceptions given in Section 2(oo) of the I.D. Act, 1947. The case of the workmen squarely falls within the meaning of retrenchment as defined in Sec. 2(oo) of the I.D. Act, 1947. I, therefore, agree with the submissions of Shri Subhas Naik that the termination of the services of the workmen by the employer amounts to retrenchment. Section 25 F of the I.D. Act, 1947 lays down the procedure to be followed while retrenching the workman. The said section lays down that no workman employed in any Industry who has been in continuous service for not less than one year under the employer shall be retrenched by that employer until, (1) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of the notice has expired or the workman has been paid in lieu of such notice, wages for period of notice (2) the workman has been paid at the time of retrenchment compensation which shall be equivalent of 15 days average wage for every completed year of continuous service or any part thereof in excess of 6 months and (3) notice in prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

All the above conditions are the conditions precedent to retrenchment. Section 25 F of the I.D. Act, is attracted if the workman has been in continuous service for not less than one year. Sec. 25 B of the I.D. Act, 1947 defines continuous service. It states that a workman shall be deemed to be in continuous service under a employer for a period of one year if the workman during the period of 12 calendar months preceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a Mine and 240 days in any other case. The contention of the workman is that they have worked for more than 240 days during the period of 12 months preceeding the date of termination of their services i. e. 12 months prior to 16-10-86. They had made a pleading to this effect in their statement of claim which the employer infact did not deny in its written statement. However, even other-



wise, the employer has produced through its witness the copies of the muster roll along with the summary at Exb. E-1 (colly) and E-2 (colly) in respect of both the workmen. The said documents clearly prove that during the period of 12 months preceeding 16-10-86 i. e. prior to the termination of their services the workmen have worked for more than 240 days with the employer. Therefore, the provisions of Section 25-F are attracted to the workmen. The employer has admitted that no notice was given to the workmen prior to the termination of their services nor wages for the period of notice was paid to them nor any retrenchment compensation was paid to them as provided u/s 25 F of the I.D. Act, 1947. According to the employer the compliance of Sec. 25 F of the I.D. Act, 1947 was not necessary because no letter of appointment was issued to them and also because they were casual workers on purely temporary basis. The Calcutta High Court in the case of Tapan Kumar Jana (supra) in para. 24 of its judgment held that there is no legal principle that lays down that an oral appointment is not employment or does not create relationship of master and servant. The High Court further held that there cannot be any proposition that there always must be a written contract of service of the termination of services must be in writing. The Calcutta High Court also held that as it is found that a person is a workman, there can be no doubt that there was relationship of master and servant. In the circumstances the Calcutta High Court held that the termination of the services of Mr. Tapan Kumar Jana as the casual labourer of the Calcutta Telephones did amount to retrenchment within the meaning of Sec. 2(oo) of the Act. In para. 25 of its judgment the Calcutta High Court further held that since the termination of the appellant Tapan Kumar Jana was without complying with the provisions of Sec. 25 F of the I.D. Act, 1947, it was illegal termination and he was entitled to reinstatement. In the case of PWD Employees Union and Others v/s State of Gujarat and others reported in 1988 (II) LLJ 524, the Gujarat High Court also held in para. 19 of its judgment as follows:

"Since it is an admitted position that all the petitioners had completed 240 days of service they were entitled to claim compliance of Sec. 25 F of the I.D. Act, 1947 and since it is not complied with their termination is void ab initio and they are entitled to be treated as if in service all along as if there was no break and will be entitled to all benefits flowing therefrom."

I agree with the decisions of the Calcutta High Court and Gujarat High Court referred to hereinabove. Even otherwise the Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Haryana & Others reported in 1979 S.C. 170 while comparing the compensation to be paid in the case of closure and when a workman is to be retrenched, in para. 16 of its judgment held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment. The Supreme Court further held that failure to comply with the provisions prescribing conditions precedent for valid retrenchment in Sec. 25-F renders the order of retrenchment invalid and inoperative. In the present case, there is an admission on the part of the employer that no notice was given to the workmen nor wages were paid to them in lieu of such notice nor compensation was paid for retrenching them as required u/s 25-F of the I.D. Act, 1947. Therefore, the termination of the services of the workmen becomes illegal, invalid and inoperative. In the circumstances, I hold that the workmen have succeeded in proving that the order of termination of their services is not legal and justified and hence I answer the issue No. 3 in the affirmative.

**Issue No. 4:-** It has been held by me that the order of termination of services of the workmen is illegal and unjustified. Now, the question for determination is what relief should be awarded to the workmen. Adv. Thaly representing the employer in the course of his arguments submitted that there are no posts of Guage Readers in the Irrigation Department and hence reinstatement cannot be granted. In the first instance, it was never pleaded in the written statement

by the employer that there are no regular posts of Guage Readers in the Irrigation Department. Besides, no evidence whatsoever has been brought on record in this respect by the employer. On the contrary, the employer's witness Shri Kotiganhally Iyer has stated in his cross examination that after the services of the workmen were discontinued, the employer employed two other persons in their place. This clearly dis proves the submissions of Adv. Thaly which are neither supported by pleadings nor by evidence. The ordinary rule is that when the order of termination of services of the workman is held to be illegal unjustified the workman should be reinstated with full back wages unless there are circumstance which do not warrant reinstatement or full back wages. In the present case, I do not find any reasons to deviate from the normal rule. The Calcutta High Court in the case of Tapan Kumar Jana (supra) and the Gujarat High Court in the case of PWD Employees Union and others (supra) after holding that the retrenchment of the workman was illegal for not complying with the provisions of Sec. 25-F of the I.D. Act, 1947 granted reinstatement with full back wages and all other benefits. The Supreme Court in the case of State Bank of India v/s Shri N. Sundara Money reported on AIR 1976 S.C. at page 1111 after holding that the termination of the services of the workmen was illegal for not complying with the provisions of Sec. 25-F of the I.D. Act, 1947, awarded reinstatement to the workman with full back wages. In the said case before the Supreme Court, the workman Shri Money was appointed off and on by the State Bank of India between 31st of July, 1973 and 29th Aug., 1973. However, he had worked for 240 days as required under Sec. 25-B(2) of the I.D. Act, 1947 and therefore he was deemed to be in continuous service. Since the State Bank of India did not comply with the provisions of Sec. 25-F of the Act at the time when his services were terminated, the Supreme Court held that his termination was invalid. This being the case, the Supreme Court in para. 10 of its judgment held as follows:

"What follows? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen and now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows."

In the present case also the services of the workman were terminated without complying with the provisions of Sec. 25-F of the Act. There is also no evidence that after the services of the workmen were terminated they were gainfully employed. Therefore, in the facts and circumstances of the present case also, it would be just and proper to award reinstatement to the workmen with full back wages. I, therefore, hold that the workmen are entitled for reinstatement with full back wages and all other consequential benefits. Hence, I pass the following order.

#### ORDER

It is hereby held that the Works Division IX of the Irrigation Department of Goa, Margao, is an Industry in terms of Sec. 2(J) of the Industrial Disputes Act, 1947. It is further held that the action of the Executive Engineer, Works Div. IX Irrigation Department, Government of Goa, Margao, in terminating the services of workmen Shri Subhas Patil and Shri Pradip Hubliker w.e.f. 16-10-86 is illegal and unjustified. The workmen Shri Pradip Hubliker and Shri Subhas Patil are ordered to be reinstated with full back wages and all other consequential benefits.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni)  
Presiding Officer  
Industrial Tribunal